IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 20976 of 2007(V)

AGAINST THE ORDER DATED 22/03/2007 IN EA.297/1999,EP.201/1996 IN OS.789/1990 of PRL.M.C., KOTTAYAM

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PETITIONERS:

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1. NANU, VELLARAPPALLIKKUNNEL HOUSE,
   PAMPADY VILLAGE, PAMPADY KARA.

2. CHELLAMMA, VELLARAPPALLIKKUNNEL HOUSE
   PAMPADY VILLAGE, PAMPADY KARA.

BY ADV. SRI.B.PREMOD

RESPONDENTS:

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1. CHALLAPPAN,VELLARAPPALLIKKUNNEL HOUSE,
   PAMPADY VILLAGE, PAMPADY KARA.

2. RAJAPPAN, VALLARAPPALLIKKUNNEL HOUSE,
   PAMPADY VILLAGE, PAMPADY KARA.

3. VISWABHARAN, MANJADIYIL HOUSE,
   PAMPADY KARA, PAMPADY KARA.

4. MANOJ, MANJADIYIL HOUSE,PAMPADY, KARA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.20976 OF 2007

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Dated this the 10th day of July, 2007

JUDGMENT

This writ petition is filed seeking to set aside Ext.P5 order in E.P.No.201 of 1996 in O.S.No.789 of 1990. An application under Order XXI Rule 97 was filed. The court adjudicated the matter and found that the obstructors have no valid right over the property and therefore disallowed the prayer of the obstructors. Admittedly it is an order passed under Order XXI Rule 97 C.P.C. It is a settled principle of law that one need not wait till actual date of dispossession to file a claim application. When such an application is filed an enquiry under Order XXI Rule 101 is contemplated where the right title and interest of the parties had to be adjudicated as if it is a suit and the said order will have all the clippings of a decree and it is an appealable order as well, or in other words, the order passed by the court below is an appealable order and therefore jurisdiction under Article 227 cannot be exercised to set aside the same. At the same time the petitioners have come to this court with the earnest belief that they will be able to prosecute the same here. Therefore, though I dismiss this writ petition as

not maintainable, I direct the court below not to effect delivery of the property for a period of one month from today and in the meanwhile the writ petitioners, if so advised, can prefer an appeal and obtain order in accordance with law.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-